

109TH CONGRESS  
1ST SESSION

# S. 596

To reform the Nation’s outdated laws relating to the electric industry, improve the operation of our transmission system, enhance reliability of our electric grid, increase consumer benefits from wholesale electric competition and restore investor confidence in the electric industry.

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## IN THE SENATE OF THE UNITED STATES

MARCH 10, 2005

Mr. THOMAS introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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## A BILL

To reform the Nation’s outdated laws relating to the electric industry, improve the operation of our transmission system, enhance reliability of our electric grid, increase consumer benefits from wholesale electric competition and restore investor confidence in the electric industry.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Electric Transmission  
5       and Reliability Enhancement Act of 2005”.

# TITLE I—TRANSMISSION IMPROVEMENT

## SEC. 101. OPEN NON-DISCRIMINATORY ACCESS.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by inserting after section 211 the following:

“OPEN ACCESS BY UNREGULATED TRANSMITTING  
UTILITIES

“SEC. 211A. (a) Subject to section 212(h), the Commission may, by rule or order, require an unregulated transmitting utility to provide transmission services—

“(1) at rates that are comparable to those that the unregulated transmitting utility charges itself, and

“(2) on terms and conditions (not relating to rates) that are comparable to those under Commission rules that require public utilities to offer open access transmission services and that are not unduly discriminatory or preferential.

“(b) The Commission shall exempt from any rule or order under this subsection any unregulated transmitting utility that—

“(1) sells no more than 4,000,000 megawatt hours of electricity per year;

1           “(2) does not own or operate any transmission  
2           facilities that are necessary for operating an inter-  
3           connected transmission system (or any portion  
4           thereof); or

5           “(3) meets other criteria the Commission deter-  
6           mines to be in the public interest.

7           “(c) The rate changing procedures applicable to pub-  
8           lic utilities under subsections (c) and (d) of section 205  
9           are applicable to unregulated transmitting utilities for  
10          purposes of this section.

11          “(d) In exercising its authority under paragraph (1)  
12          of subsection (a), the Commission may remand trans-  
13          mission rates to an unregulated transmitting utility for  
14          review and revision where necessary to meet the require-  
15          ments of subsection (a).

16          “(e) The provision of transmission services under  
17          subsection (a) does not preclude a request for trans-  
18          mission services under section 211.

19          “(f) The Commission may not require a State or mu-  
20          nicipality to take action under this section that constitutes  
21          a private business use for purposes of section 141 of the  
22          Internal Revenue Code of 1986 (26 U.S.C. 141).

23          “(g) For purposes of this subsection, the term ‘un-  
24          regulated transmitting utility’ means an entity that—

1           “(1) owns or operates facilities used for the  
2       transmission of electric energy in interstate com-  
3       merce, and

4           “(2) is either an entity described in section  
5       201(f) or a rural electric cooperative.”.

6 **SEC. 102. FEDERAL AGENCY COORDINATION.**

7       The Department of Energy shall be the lead agency  
8       for conducting environmental review (for purposes of the  
9       National Environmental Policy Act of 1969) of the estab-  
10      lishment and modification of electric power transmission  
11      corridors across federal lands. The Secretary of Energy  
12      shall coordinate with Federal agencies, including Federal  
13      land management agencies, to ensure the timely comple-  
14      tion of environmental reviews pertaining to such corridors  
15      and may set deadlines for the completion of such reviews.  
16      For purposes of this section, the term “Federal land man-  
17      agement agencies” means the Bureau of Land Manage-  
18      ment, the United States Forest Service, the United States  
19      Fish and Wildlife Service, and the Department of Defense.  
20      For purposes of this section, “Federal lands” means all  
21      lands owned by the United States except lands in the Na-  
22      tional Park System or the national wilderness preservation  
23      system, or such other lands as the President may des-  
24      ignate.

1 **SEC. 103. PRIORITY FOR RIGHTS-OF-WAY ACROSS FEDERAL**  
 2 **LANDS.**

3 Section 501 of the Federal Land Policy and Manage-  
 4 ment Act of 1976 (43 U.S.C. 1761) is amended by adding  
 5 the following new subsection at the end thereof:

6 “(e) In administering the provisions of this title, the  
 7 Secretary of the Interior and the Secretary of Agriculture  
 8 shall each shall give a priority to applications for rights  
 9 of way for electric power transmission corridors.”.

10 **SEC. 104. ELECTRIC RELIABILITY STANDARDS.**

11 Part II of the Federal Power Act (16 U.S.C. 824 et  
 12 seq.) is amended by inserting the following new section  
 13 at the end thereof:

14 **“SEC. 215. ELECTRIC RELIABILITY.**

15 “(a) DEFINITIONS.—For purposes of this section—

16 “(1) The term ‘bulk-power system’ means—

17 “(A) facilities and control systems nec-  
 18 essary for operating an interconnected electric  
 19 energy transmission network (or any portion  
 20 thereof); and

21 “(B) electric energy from generation facili-  
 22 ties needed to maintain transmission system re-  
 23 liability.

24 The term does not include facilities used in the local  
 25 distribution of electric energy.

1           “(2) The terms ‘Electric Reliability Organiza-  
2           tion’ and ‘ERO’ mean the organization certified by  
3           the Commission under subsection (c) the purpose of  
4           which is to establish and enforce reliability stand-  
5           ards for the bulk-power system, subject to Commis-  
6           sion review.

7           “(3) The term ‘reliability standard’ means a re-  
8           quirement, approved by the Commission under this  
9           section, to provide for reliable operation of the bulk-  
10          power system. The term includes requirements for  
11          the operation of existing bulk-power system facilities  
12          and the design of planned additions or modifications  
13          to such facilities to the extent necessary to provide  
14          for reliable operation of the bulk-power system, but  
15          the term does not include any requirement to en-  
16          large such facilities or to construct new transmission  
17          capacity or generation capacity.

18          “(4) The term ‘reliable operation’ means oper-  
19          ating the elements of the bulk-power system within  
20          equipment and electric system thermal, voltage, and  
21          stability limits so that instability, uncontrolled sepa-  
22          ration, or cascading failures of such system will not  
23          occur as a result of a sudden disturbance or unan-  
24          ticipated failure of system elements.

1           “(5) The term ‘Interconnection’ means a geo-  
2           graphic area in which the operation of bulk-power  
3           system components is synchronized such that the  
4           failure of one or more of such components may ad-  
5           versely affect the ability of the operators of other  
6           components within the system to maintain reliable  
7           operation of the facilities within their control.

8           “(6) The term ‘transmission organization’  
9           means a regional transmission organization, inde-  
10          pendent system operator, independent transmission  
11          provider, or other transmission organization finally  
12          approved by the Commission for the operation of  
13          transmission facilities.

14          “(7) The term ‘regional entity’ means an entity  
15          having enforcement authority pursuant to subsection  
16          (e)(4).

17          “(b) JURISDICTION AND APPLICABILITY.—(1) The  
18          Commission shall have jurisdiction, within the United  
19          States, over the ERO certified by the Commission under  
20          subsection (c), any regional entities, and all users, owners  
21          and operators of the bulk-power system, including but not  
22          limited to the entities described in section 201(f), for pur-  
23          poses of approving reliability standards established under  
24          this section and enforcing compliance with this section. All  
25          users, owners and operators of the bulk-power system

1 shall comply with reliability standards that take effect  
2 under this section.

3 “(2) The Commission shall issue a final rule to imple-  
4 ment the requirements of this section not later than 180  
5 days after the date of enactment of this section.

6 “(c) CERTIFICATION.—Following the issuance of a  
7 Commission rule under subsection (b)(2), any person may  
8 submit an application to the Commission for certification  
9 as the Electric Reliability Organization (ERO). The Com-  
10 mission may certify one such ERO if the Commission de-  
11 termines that such ERO—

12 “(1) has the ability to develop and enforce, sub-  
13 ject to subsection (e)(2), reliability standards that  
14 provide for an adequate level of reliability of the  
15 bulk-power system;

16 “(2) has established rules that—

17 “(A) assure its independence of the users  
18 and owners and operators of the bulk-power  
19 system, while assuring fair stakeholder rep-  
20 resentation in the selection of its directors and  
21 balanced decisionmaking in any ERO com-  
22 mittee or subordinate organizational structure;

23 “(B) allocate equitably reasonable dues,  
24 fees, and other charges among end users for all  
25 activities under this section;



1           “(C) provide fair and impartial procedures  
2           for enforcement of reliability standards through  
3           the imposition of penalties in accordance with  
4           subsection (e) (including limitations on activi-  
5           ties, functions, or operations, or other appro-  
6           priate sanctions);

7           “(D) provide for reasonable notice and op-  
8           portunity for public comment, due process,  
9           openness, and balance of interests in developing  
10          reliability standards and otherwise exercising its  
11          duties; and

12          “(E) provide for taking, after certification,  
13          appropriate steps to gain recognition in Canada  
14          and Mexico.

15          “(d) RELIABILITY STANDARDS.—(1) The Electric  
16          Reliability Organization shall file each reliability standard  
17          or modification to a reliability standard that it proposes  
18          to be made effective under this section with the Commis-  
19          sion.

20          “(2) The Commission may approve by rule or order  
21          a proposed reliability standard or modification to a reli-  
22          ability standard if it determines that the standard is just,  
23          reasonable, not unduly discriminatory or preferential, and  
24          in the public interest. The Commission shall give due  
25          weight to the technical expertise of the Electric Reliability

1 Organization with respect to the content of a proposed  
2 standard or modification to a reliability standard and to  
3 the technical expertise of a regional entity organized on  
4 an Interconnection-wide basis with respect to a reliability  
5 standard to be applicable within that Interconnection, but  
6 shall not defer with respect to the effect of a standard  
7 on competition. A proposed standard or modification shall  
8 take effect upon approval by the Commission.

9 “(3) The Electric Reliability Organization shall  
10 rebuttably presume that a proposal from a regional entity  
11 organized on an Interconnection-wide basis for a reliability  
12 standard or modification to a reliability standard to be ap-  
13 plicable on an Interconnection-wide basis is just, reason-  
14 able, and not unduly discriminatory or preferential, and  
15 in the public interest.

16 “(4) The Commission shall remand to the Electric  
17 Reliability Organization for further consideration a pro-  
18 posed reliability standard or a modification to a reliability  
19 standard that the Commission disapproves in whole or in  
20 part.

21 “(5) The Commission, upon its own motion or upon  
22 complaint, may order the Electric Reliability Organization  
23 to submit to the Commission a proposed reliability stand-  
24 ard or a modification to a reliability standard that ad-  
25 dresses a specific matter if the Commission considers such

1 a new or modified reliability standard appropriate to carry  
2 out this section.

3 “(6) The final rule adopted under subsection (b)(2)  
4 shall include fair processes for the identification and time-  
5 ly resolution of any conflict between a reliability standard  
6 and any function, rule, order, tariff, rate schedule, or  
7 agreement accepted, approved, or ordered by the Commis-  
8 sion applicable to a transmission organization. Such trans-  
9 mission organization shall continue to comply with such  
10 function, rule, order, tariff, rate schedule or agreement ac-  
11 cepted approved, or ordered by the Commission until—

12 “(A) the Commission finds a conflict exists be-  
13 tween a reliability standard and any such provision;

14 “(B) the Commission orders a change to such  
15 provision pursuant to section 206 of this part; and

16 “(C) the ordered change becomes effective  
17 under this part.

18 If the Commission determines that a reliability standard  
19 needs to be changed as a result of such a conflict, it shall  
20 order the ERO to develop and file with the Commission  
21 a modified reliability standard under paragraph (4) or (5)  
22 of this subsection.

23 “(e) ENFORCEMENT.—(1) The ERO may impose,  
24 subject to paragraph (2), a penalty on a user or owner  
25 or operator of the bulk-power system for a violation of a

1 reliability standard approved by the Commission under  
2 subsection (d) if the ERO, after notice and an opportunity  
3 for a hearing—

4           “(A) finds that the user or owner or operator  
5       has violated a reliability standard approved by the  
6       Commission under subsection (d); and

7           “(B) files notice and the record of the pro-  
8       ceeding with the Commission.

9       “(2) A penalty imposed under paragraph (1) may  
10 take effect not earlier than the 31st day after the Electric  
11 Reliability Organization files with the Commission notice  
12 of the penalty and the record of proceedings. Such penalty  
13 shall be subject to review by the Commission, on its own  
14 motion or upon application by the user, owner or operator  
15 that is the subject of the penalty filed within 30 days after  
16 the date such notice is filed with the Commission. Applica-  
17 tion to the Commission for review, or the initiation of re-  
18 view by the Commission on its own motion, shall not oper-  
19 ate as a stay of such penalty unless the Commission other-  
20 wise orders upon its own motion or upon application by  
21 the user, owner or operator that is the subject of such  
22 penalty. In any proceeding to review a penalty imposed  
23 under paragraph (1), the Commission, after notice and op-  
24 portunity for hearing (which hearing may consist solely  
25 of the record before the Electric Reliability Organization

1 and opportunity for the presentation of supporting reasons  
2 to affirm, modify, or set aside the penalty), shall by order  
3 affirm, set aside, reinstate, or modify the penalty, and,  
4 if appropriate, remand to the Electric Reliability Organi-  
5 zation for further proceedings. The Commission shall im-  
6 plement expedited procedures for such hearings.

7 “(3) On its own motion or upon complaint, the Com-  
8 mission may order compliance with a reliability standard  
9 and may impose a penalty against a user or owner or oper-  
10 ator of the bulk-power system, if the Commission finds,  
11 after notice and opportunity for a hearing, that the user  
12 or owner or operator of the bulk-power system has en-  
13 gaged or is about to engage in any acts or practices that  
14 constitute or will constitute a violation of a reliability  
15 standard.

16 “(4) The Commission shall establish regulations di-  
17 recting the ERO to enter into an agreement to delegate  
18 authority to a regional entity for the purpose of proposing  
19 reliability standards to the ERO and enforcing reliability  
20 standards under paragraph (1) if—

21 “(A) the regional entity is governed by an inde-  
22 pendent, balanced stakeholder, or combination inde-  
23 pendent and balanced stakeholder board;

24 “(B) the regional entity otherwise satisfies the  
25 provisions of subsection (c)(1) and (2); and

1           “(C) the agreement promotes effective and effi-  
2           cient administration of bulk-power system reliability.  
3   The Commission may modify such delegation. The ERO  
4   and the Commission shall rebuttably presume that a pro-  
5   posal for delegation to a regional entity organized on an  
6   Interconnection-wide basis promotes effective and efficient  
7   administration of bulk-power system reliability and should  
8   be approved. Such regulation may provide that the Com-  
9   mission may assign the ERO’s authority to enforce reli-  
10   ability standards under paragraph (1) directly to a re-  
11   gional entity consistent with the requirements of this para-  
12   graph.

13           “(5) The Commission may take such action as is nec-  
14   essary or appropriate against the ERO or a regional entity  
15   to ensure compliance with a reliability standard or any  
16   Commission order affecting the ERO or a regional entity.

17           “(6) Any penalty imposed under this section shall  
18   bear a reasonable relation to the seriousness of the viola-  
19   tion and shall take into consideration the efforts of such  
20   user, owner, or operator to remedy the violation in a time-  
21   ly manner.

22           “(f) CHANGES IN ELECTRICITY RELIABILITY ORGA-  
23   NIZATION RULES.—The Electric Reliability Organization  
24   shall file with the Commission for approval any proposed  
25   rule or proposed rule change, accompanied by an expla-

1 nation of its basis and purpose. The Commission, upon  
2 its own motion or complaint, may propose a change to the  
3 rules of the Electric Reliability Organization. A proposed  
4 rule or proposed rule change shall take effect upon a find-  
5 ing by the Commission, after notice and opportunity for  
6 comment, that the change is just, reasonable, not unduly  
7 discriminatory or preferential, is in the public interest, and  
8 satisfies the requirements of subsection (c).

9 “(g) RELIABILITY REPORTS.—The Electric Reli-  
10 ability Organization shall conduct periodic assessments of  
11 the reliability and adequacy of the bulk-power system in  
12 North America.

13 “(h) COORDINATION WITH CANADA AND MEXICO.—  
14 The President is urged to negotiate international agree-  
15 ments with the governments of Canada and Mexico to pro-  
16 vide for effective compliance with reliability standards and  
17 the effectiveness of the Electric Reliability Organization  
18 in the United States and Canada or Mexico.

19 “(i) SAVINGS PROVISIONS.—(1) The Electric Reli-  
20 ability Organization shall have authority to develop and  
21 enforce compliance with reliability standards for only the  
22 bulk-power system.

23 “(2) This section does not authorize the Electric Reli-  
24 ability Organization or the Commission to order the con-  
25 struction of additional generation or transmission capacity

1 or to set and enforce compliance with standards for ade-  
2 quacy or safety of electric facilities or services.

3 “(3) Nothing in this section shall be construed to pre-  
4 empt any authority of any State to take action to ensure  
5 the safety, adequacy, and reliability of electric service  
6 within that State, as long as such action is not incon-  
7 sistent with any reliability standard.

8 “(4) Within 90 days of the application of the Electric  
9 Reliability Organization or other affected party, and after  
10 notice and opportunity for comment, the Commission shall  
11 issue a final order determining whether a State action is  
12 inconsistent with a reliability standard, taking into consid-  
13 eration any recommendation of the Electric Reliability Or-  
14 ganization.

15 “(5) The Commission, after consultation with the  
16 Electric Reliability Organization, may stay the effective-  
17 ness of any State action, pending the Commission’s  
18 issuance of a final order.

19 “(j) REGIONAL ADVISORY BODIES.—The Commis-  
20 sion shall establish a regional advisory body on the petition  
21 of at least two-thirds of the States within a region that  
22 have more than one-half of their electric load served within  
23 the region. A regional advisory body shall be composed of  
24 one member from each participating State in the region,  
25 appointed by the Governor of each State, and may include



1 representatives of agencies, States, and provinces outside  
 2 the United States. A regional advisory body may provide  
 3 advice to the Electric Reliability Organization, a regional  
 4 entity, or the Commission regarding the governance of an  
 5 existing or proposed regional entity within the same re-  
 6 gion, whether a standard proposed to apply within the re-  
 7 gion is just, reasonable, not unduly discriminatory or pref-  
 8 erential, and in the public interest, whether fees proposed  
 9 to be assessed within the region are just, reasonable, not  
 10 unduly discriminatory or preferential, and in the public  
 11 interest and any other responsibilities requested by the  
 12 Commission. The Commission may give deference to the  
 13 advice of any such regional advisory body if that body is  
 14 organized on an Interconnection-wide basis.

15 “(k) APPLICATION TO ALASKA AND HAWAII.—The  
 16 provisions of this section do not apply to Alaska or Ha-  
 17 waii.”.

18 **TITLE II—ELIMINATION OF**  
 19 **COMPETITIVE BARRIERS**  
 20 **Subtitle A—Provisions Regarding**  
 21 **the Public Utility Holding Com-**  
 22 **pany Act of 1935**

23 **SEC. 201. DEFINITIONS.**

24 For the purposes of this subtitle:

1           (1) The term “affiliate” of a company means  
2           any company 5 percent or more of the outstanding  
3           voting securities of which are owned, controlled, or  
4           held with power to vote, directly or indirectly, by  
5           such company.

6           (2) The term “associate company” of a com-  
7           pany means any company in the same holding com-  
8           pany system with such company.

9           (3) The term “Commission” means the Federal  
10          Energy Regulatory Commission.

11          (4) The term “company” means a corporation,  
12          partnership, association, joint stock company, busi-  
13          ness trust, or any organized group of persons,  
14          whether incorporated or not, or a receiver, trustee,  
15          or other liquidating agent of any of the foregoing.

16          (5) The term “electric utility company” means  
17          any company that owns or operates facilities used  
18          for the generation, transmission, or distribution of  
19          electric energy for sale.

20          (6) The terms “exempt wholesale generator”  
21          and “foreign utility company” have the same mean-  
22          ings as in sections 32 and 33, respectively, of the  
23          Public Utility Holding Company Act of 1935 (15  
24          U.S.C. 79z-5, 79z-5b), as those sections existed on  
25          the day before the effective date of this subtitle.

1           (7) The term “gas utility company” means any  
2       company that owns or operates facilities used for  
3       distribution at retail (other than the distribution  
4       only in enclosed portable containers or distribution  
5       to tenants or employees of the company operating  
6       such facilities for their own use and not for resale)  
7       of natural or manufactured gas for heat, light, or  
8       power.

9           (8) the term “holding company” means—

10           (A) any company that directly or indirectly  
11       owns, controls, or holds, with power to vote, 10  
12       percent or more of the outstanding voting secu-  
13       rities of a public utility company or of a holding  
14       company of any public utility company; and

15           (B) any person, determined by the Com-  
16       mission, after notice and opportunity for hear-  
17       ing, to exercise directly or indirectly (either  
18       alone or pursuant to an arrangement or under-  
19       standing with one or more persons) such a con-  
20       trolling influence over the management or poli-  
21       cies of any public utility company or holding  
22       company as to make it necessary or appropriate  
23       for the rate protection of utility customers with  
24       respect to rates that such person be subject to

1           the obligations, duties, and liabilities imposed  
2           by this subtitle upon holding companies.

3           (9) The term “holding company system” means  
4           a holding company, together with its subsidiary com-  
5           panies.

6           (10) The term “jurisdictional rates” means  
7           rates established by the Commission for the trans-  
8           mission of electric energy in interstate commerce,  
9           the sale of electric energy at wholesale in interstate  
10          commerce, the transportation of natural gas in inter-  
11          state commerce, and the sale in interstate commerce  
12          of natural gas for resale for ultimate public con-  
13          sumption for domestic, commercial, industrial, or  
14          any other use.

15          (11) The term “natural gas company” means a  
16          person engaged in the transportation of natural gas  
17          in interstate commerce or the sale of such gas in  
18          interstate commerce for resale.

19          (12) The term “person” means an individual or  
20          company.

21          (13) The term “public utility” means any per-  
22          son who owns or operates facilities used for trans-  
23          mission of electric energy in interstate commerce or  
24          sales of electric energy at wholesale in interstate  
25          commerce.

1           (14) The term “public utility company” means  
2           an electric utility company or a gas utility company.

3           (15) The term “State commission” means any  
4           commission, board, agency, or officer, by whatever  
5           name designated, of a State, municipality, or other  
6           political subdivision of a State that, under the laws  
7           of such State, has jurisdiction to regulate public util-  
8           ity companies.

9           (16) The term “subsidiary company” of a hold-  
10          ing company means—

11                (A) any company, 10 percent or more of  
12                the outstanding voting securities of which are  
13                directly or indirectly owned, controlled, or held  
14                with power to vote, by such holding company;  
15                and

16                (B) any person, the management or poli-  
17                cies of which the Commission, after notice and  
18                opportunity for hearing, determines to be sub-  
19                ject to a controlling influence, directly or indi-  
20                rectly, by such holding company (either alone or  
21                pursuant to an arrangement or understanding  
22                with one or more other persons) so as to make  
23                it necessary for the rate protection of utility  
24                customers with respect to rates that such per-  
25                son be subject to the obligations, duties, and li-

1           abilities imposed by this subtitle upon sub-  
2           sidiary companies of holding companies.

3           (17) The term “voting security” means any se-  
4           curity presently entitling the owner or holder thereof  
5           to vote in the direction or management of the affairs  
6           of a company.

7   **SEC. 202. REPEAL OF THE PUBLIC UTILITY HOLDING COM-**  
8                           **PANY ACT OF 1935.**

9           The Public Utility Holding Company Act of 1935 (15  
10   U.S.C. 79a and following) is repealed, effective 12 months  
11   after the date of enactment of this Act.

12   **SEC. 203. FEDERAL ACCESS TO BOOKS AND RECORDS.**

13           (a) IN GENERAL.—Each holding company and each  
14   associate company thereof shall maintain, and shall make  
15   available to the Commission, such books, accounts, memo-  
16   randa, and other records as the Commission determines  
17   are relevant to costs incurred by a public utility or natural  
18   gas company that is an associate company of such holding  
19   company and necessary or appropriate for the protection  
20   of utility customers with respect to jurisdictional rates.

21           (b) AFFILIATE COMPANIES.—Each affiliate of a hold-  
22   ing company or of any subsidiary company of a holding  
23   company shall maintain, and make available to the Com-  
24   mission, such books, accounts, memoranda, and other  
25   records with respect to any transaction with another affil-

1 iate, as the Commission determines are relevant to costs  
 2 incurred by a public utility or natural gas company that  
 3 is an associate company of such holding company and nec-  
 4 essary or appropriate for the protection of utility cus-  
 5 tomers with respect to jurisdictional rates.

6 (c) HOLDING COMPANY SYSTEMS.—The Commission  
 7 may examine the books, accounts, memoranda, and other  
 8 records of any company in a holding company system, or  
 9 any affiliate thereof, as the Commission determines are  
 10 relevant to costs incurred by a public utility or natural  
 11 gas company within such holding company system and  
 12 necessary or appropriate for the protection of utility cus-  
 13 tomers with respect to jurisdictional rates.

14 (d) CONFIDENTIALITY.—No member, officer, or em-  
 15 ployee of the Commission shall divulge any fact or infor-  
 16 mation that may come to his or her knowledge during the  
 17 course of examination of books, accounts, memoranda, or  
 18 other records as provided in this section, except as may  
 19 be directed by the Commission or by a court of competent  
 20 jurisdiction.

21 **SEC. 204. STATE ACCESS TO BOOKS AND RECORDS.**

22 (a) IN GENERAL.—Upon the written request of a  
 23 State commission having jurisdiction to regulate a public  
 24 utility company in a holding company system, and subject  
 25 to such terms and conditions as may be necessary and ap-

1 appropriate to safeguard against unwarranted disclosure to  
2 the public of any trade secrets or sensitive commercial in-  
3 formation, a holding company or any associate company  
4 or affiliate thereof, wherever located, shall produce for in-  
5 spection books, accounts, memoranda, and other records  
6 that—

7           (1) have been identified in reasonable detail in  
8           a proceeding before the State commission;

9           (2) the State commission determines are rel-  
10          evant to costs incurred by such public utility com-  
11          pany; and

12          (3) are necessary for the effective discharge of  
13          the responsibilities of the State commission with re-  
14          spect to such proceeding.

15       (b) EFFECT ON STATE LAW.—Nothing in this section  
16 shall preempt applicable State law concerning the provi-  
17 sion of books, accounts, memoranda, or other records, or  
18 in any way limit the rights of any State to obtain books,  
19 accounts, memoranda, or other records, under Federal  
20 law, contract, or otherwise.

21       (c) COURT JURISDICTION.—Any United States dis-  
22 trict court located in the State in which the State commis-  
23 sion referred to in subsection (a) is located shall have ju-  
24 risdiction to enforce compliance with this section.



1 **SEC. 205. EXEMPTION AUTHORITY.**

2 (a) RULEMAKING.—Not later than 90 days after the  
3 date of enactment of this Act, the Commission shall pro-  
4 mulgate a final rule to exempt from the requirements of  
5 section 203 any person that is a holding company, solely  
6 with respect to one or more—

7 (1) qualifying facilities under the Public Utility  
8 Regulatory Policies Act of 1978;

9 (2) exempt wholesale generators; or

10 (3) foreign utility companies.

11 (b) OTHER AUTHORITY.—If, upon application or  
12 upon its own motion, the Commission finds that the books,  
13 accounts, memoranda, and other records of any person are  
14 not relevant to the jurisdictional rates of a public utility  
15 company or natural gas company, or if the Commission  
16 finds that any class of transactions is not relevant to the  
17 jurisdictional rates of a public utility company, the Com-  
18 mission shall exempt such person or transaction from the  
19 requirements of section 203.

20 **SEC. 206. AFFILIATE TRANSACTIONS.**

21 Nothing in this subtitle shall preclude the Commis-  
22 sion or a State commission from exercising its jurisdiction  
23 under otherwise applicable law to determine whether a  
24 public utility company, public utility, or natural gas com-  
25 pany may recover in rates any costs of an activity per-  
26 formed by an associate company, or any costs of goods

1 or services acquired by such public utility company, public  
2 utility, or natural gas company from an associate com-  
3 pany.

4 **SEC. 207. APPLICABILITY.**

5 No provision of this subtitle shall apply to, or be  
6 deemed to include—

7 (1) the United States;

8 (2) a State or any political subdivision of a  
9 State;

10 (3) any foreign governmental authority not op-  
11 erating in the United States;

12 (4) any agency, authority, or instrumentality of  
13 any entity referred to in paragraph (1), (2), or (3);  
14 or

15 (5) any officer, agent, or employee of any entity  
16 referred to in paragraph (1), (2), or (3) acting as  
17 such in the course of such officer, agent, or employ-  
18 ee's official duty.

19 **SEC. 208. EFFECT ON OTHER REGULATIONS.**

20 Nothing in this subtitle precludes the Commission or  
21 a State commission from exercising its jurisdiction under  
22 otherwise applicable law to protect utility customers.

23 **SEC. 209. ENFORCEMENT.**

24 The Commission shall have the same powers as set  
25 forth in sections 306 through 317 of the Federal Power

1 Act (16 U.S.C. 825e–825p) to enforce the provisions of  
2 this subtitle.

3 **SEC. 210. SAVINGS PROVISIONS.**

4 (a) IN GENERAL.—Nothing in this subtitle prohibits  
5 a person from engaging in or continuing to engage in ac-  
6 tivities or transactions in which it is legally engaged or  
7 authorized to engage on the date of enactment of this Act,  
8 if that person continues to comply with the terms of any  
9 such authorization, whether by rule or by order.

10 (b) EFFECT ON OTHER COMMISSION AUTHORITY.—  
11 Nothing in this subtitle limits the authority of the Com-  
12 mission under the Federal Power Act (16 U.S.C. 791a and  
13 following) (including section 301 of that Act) or the Nat-  
14 ural Gas Act (15 U.S.C. 717 and following) (including sec-  
15 tion 8 of that Act).

16 **SEC. 211. IMPLEMENTATION.**

17 Not later than 12 months after the date of enactment  
18 of this Act, the Commission shall—

19 (1) promulgate such regulations as may be nec-  
20 essary or appropriate to implement this subtitle; and

21 (2) submit to Congress detailed recommenda-  
22 tions on technical and conforming amendments to  
23 Federal law necessary to carry out this subtitle and  
24 the amendments made by this subtitle.

1 **SEC. 212. TRANSFER OF RESOURCES.**

2 All books and records that relate primarily to the  
3 functions transferred to the Commission under this sub-  
4 title shall be transferred from the Securities and Exchange  
5 Commission to the Commission.

6 **SEC. 213. EFFECTIVE DATE.**

7 This subtitle shall take effect 12 months after the  
8 date of enactment of this Act.

9 **SEC. 214. CONFORMING AMENDMENT TO THE FEDERAL**  
10 **POWER ACT.**

11 Section 318 of the Federal Power Act (16 U.S.C.  
12 825q) is repealed.

13 **Subtitle B—Provisions Regarding**  
14 **the Public Utility Regulatory**  
15 **Policies Act of 1978**

16 **SEC. 215. PROSPECTIVE REPEAL OF SECTION 210.**

17 (a) NEW CONTRACTS.—After the date of enactment  
18 of this Act, no electric utility shall be required to enter  
19 into a new contract or obligation to purchase or to sell  
20 electric energy or capacity pursuant to section 210 of the  
21 Public Utility Regulatory Policies Act of 1978 (16 U.S.C.  
22 824a–3).

23 (b) EXISTING RIGHTS AND REMEDIES NOT AF-  
24 FECTED.—Nothing in this Act affects the rights or rem-  
25 edies of any party with respect to the purchase or sale  
26 of electric energy or capacity from or to a facility deter-

1 mined to be a qualifying small power production facility  
2 or a qualifying cogeneration facility under section 210 of  
3 the Public Utility Regulatory Policies Act of 1978 pursu-  
4 ant to any contract or obligation to purchase or to sell  
5 electric energy or capacity in effect on the date of enact-  
6 ment of this Act, including the right to recover the costs  
7 of purchasing such electric energy or capacity.

8 **SEC. 216. RECOVERY OF COSTS.**

9       In order to assure recovery by electric utilities pur-  
10 chasing electric energy or capacity from a qualifying facil-  
11 ity pursuant to any legally enforceable obligation entered  
12 into or imposed pursuant to section 210 of the Public Util-  
13 ity Regulatory Policies Act of 1978 prior to the date of  
14 enactment of this Act, of all costs associated with such  
15 purchases, the Commission shall promulgate and enforce  
16 such regulations as may be required to assure that no such  
17 electric utility shall be required directly or indirectly to  
18 absorb the costs associated with such purchases from a  
19 qualifying facility. Such regulations shall be treated as a  
20 rule enforceable under the Federal Power Act (16 U.S.C.  
21 791a–825r).

22 **SEC. 217. DEFINITIONS.**

23       For purposes of this subtitle, the terms “Commis-  
24 sion”, “electric utility”, “qualifying cogeneration facility”,  
25 and “qualifying small power production facility”, shall

1 have the same meanings as provided in the Public Utility  
 2 Regulatory Policies Act of 1978, and the term “qualifying  
 3 facility” shall mean either a qualifying small production  
 4 facility or a qualifying cogeneration facility as defined in  
 5 such Act.

6 **TITLE III—MARKET TRANSPARENCY, ANTI-MANIPULATION AND ENFORCEMENT**

9 **Subtitle A—Market Transparency, Anti-Manipulation and Enforcement**

12 **SEC. 301. MARKET TRANSPARENCY RULES.**

13 Part II of the Federal Power Act is amended by adding after section 215 as added by this Act the following:

15 **“SEC. 216. MARKET TRANSPARENCY RULES.**

16 “(a) COMMISSION RULES.—Not later than 180 days  
 17 after the date of enactment of this section, the Commission shall issue rules establishing an electronic information  
 18 system to provide the Commission and the public with access to such information as is necessary or appropriate  
 19 to facilitate price transparency and participation in markets subject to the Commission’s jurisdiction. Such systems shall provide statistical information about the availability and market price of wholesale electric energy and  
 20 transmission services to the Commission, State commis-

1 sions, buyers and sellers of wholesale electric energy, users  
2 of transmission services, and the public on a timely basis.

3 “(b) INFORMATION REQUIRED.—The Commission  
4 shall require—

5 “(1) each regional transmission organization or,  
6 where no regional transmission organization is oper-  
7 ating, each transmitting utility to provide informa-  
8 tion about the available capacity of transmission fa-  
9 cilities operated by the organization or transmitting  
10 utility; and

11 “(2) each regional transmission organization or  
12 broker or exchange to provide aggregate information  
13 about the amount and price of physical sales of elec-  
14 tric energy at wholesale in interstate commerce it  
15 transacts.

16 “(c) DEFINITION.—For purposes of this section, the  
17 term ‘broker or exchange’ means an entity that matches  
18 offers to sell and offers to buy physical sales of wholesale  
19 electric energy in interstate commerce.

20 “(d) PROTECTION OF SENSITIVE INFORMATION.—  
21 The Commission shall exempt from disclosure information  
22 it determines would, if disclosed, be detrimental to the op-  
23 eration of an effective market.”.

1 **SEC. 302. MARKET MANIPULATION.**

2 (a) Part II of the Federal Power Act is amended by  
3 adding after section 216 as added by this Act the fol-  
4 lowing:

5 **“SEC. 217. PROHIBITION ON FILING FALSE INFORMATION.**

6 “It shall be a violation of this Act for any person will-  
7 fully and knowingly to report any information relating to  
8 the price of electricity sold at wholesale, which information  
9 the person knew to be false at the time of the reporting,  
10 to any governmental or non-governmental entity and with  
11 the intent to manipulate the data being compiled by such  
12 entity.

13 **“SEC. 218. PROHIBITION ON ROUND TRIP TRADING.**

14 “(a) PROHIBITION.—It shall be a violation of this Act  
15 for any person willfully and knowingly to enter into any  
16 contract or other arrangement to execute a ‘round-trip  
17 trade’ for the purchase or sale of electric energy at whole-  
18 sale.

19 “(b) DEFINITION OF ROUND-TRIP TRADE.—For the  
20 purposes of this section, the term ‘round trip trade’ means  
21 a transaction, or combination of transactions, in which a  
22 person or other entity—

23 “(1) enters into a contract or other arrange-  
24 ment to purchase from, or sell to, any other person  
25 or other entity electric energy at wholesale;



1           “(2) simultaneously with entering into the con-  
 2           tract or arrangement described in paragraph (1), ar-  
 3           ranges a financially offsetting trade with such other  
 4           person or entity for the same such electric energy,  
 5           at the same location, price, quantity and terms so  
 6           that, collectively, the purchase and sale transactions  
 7           in themselves result in no financial gain or loss; and  
 8           “(3) enters into the contract or arrangement  
 9           with the intent to deceptively affect reported reve-  
 10          nues, trading volumes, or prices.”.

11 **SEC. 303. ENFORCEMENT.**

12           (a) COMPLAINTS.—Section 306 of the Federal Power  
 13 Act (16 U.S.C. 825e) is amended by—

14           (1) inserting “electric utility,” after “Any per-  
 15          son,”; and

16           (2) inserting “transmitting utility,” after “li-  
 17          censee” each place it appears.

18           (b) INVESTIGATIONS.—Section 307(a) of the Federal  
 19 Power Act (16 U.S.C. 825f(a)) is amended by inserting  
 20 “or transmitting utility” after “any person” in the first  
 21 sentence.

22           (c) REVIEW OF COMMISSION ORDERS.—Section  
 23 313(a) of the Federal Power Act (16 U.S.C. 8251) is  
 24 amended by inserting “electric utility,” after “Any per-  
 25 son,” in the first sentence.

1 (d) CRIMINAL PENALTIES.—Section 316 of the Fed-  
 2 eral Power Act (16 U.S.C. 825o) is amended—

3 (1) in subsection (a), by striking “\$5,000” and  
 4 inserting “\$1,000,000”, and by striking “two years”  
 5 and inserting “five years”;

6 (2) in subsection (b), by striking “\$500” and  
 7 inserting “\$25,000”; and

8 (3) by striking subsection (c).

9 (e) CIVIL PENALTIES.—Section 316A of the Federal  
 10 Power Act (16 U.S.C. 825o–1) is amended—

11 (1) in subsections (a) and (b), by striking “sec-  
 12 tion 211, 212, 213, or 214” each place it appears  
 13 and inserting “Part II”; and

14 (2) in subsection (b), by striking “\$10,000”  
 15 and inserting “\$1,000,000”.

## 16 **Subtitle B—Refund Effective Date**

### 17 **SEC. 304. REFUND EFFECTIVE DATE.**

18 Section 206(b) of the Federal Power Act (16 U.S.C.  
 19 824e(b)) is amended by—

20 (1) striking “the date 60 days after the filing  
 21 of such complaint nor later than 5 months after the  
 22 expiration of such 60-day period” in the second sen-  
 23 tence and inserting “the date of the filing of such  
 24 complaint nor later than 5 months after the filing of  
 25 such complaint”;

1           (2) striking “60 days after” in the third sen-  
2       tence and inserting “of”;

3           (3) striking “expiration of such 60-day period”  
4       in the third sentence and inserting “publication  
5       date”; and

6           (4) striking the fifth sentence and inserting in  
7       lieu thereof: “If no final decision is rendered by the  
8       conclusion of the 180-day period commencing upon  
9       initiation of a proceeding pursuant to this section,  
10      the Commission shall state the reasons why it has  
11      failed to do so and shall state its best estimate as  
12      to when it reasonably expects to make such deci-  
13      sion.”.

○